IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 362 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO LTD - Appellant(s)
Versus
AMINABEN HABIBBHAI JUNACH & 5 - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1,
MR MRUGEN K PUROHIT for Respondent(s) : 1 - 5.
RULE NOT RECD BACK for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 19/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Challenge in this appeal filed under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) is to the judgment and award dated 30.9.2005 rendered in MACP No. 1796 of 1999 by the Presiding Officer, Motor Accident Claims Tribunal (Aux.) Rajkot ('the Tribunal' for short) by which the claim petition filed under Section 166 of the Act by respondent Nos.1 to 5 – original claimants ('the claimants' for short) against the appellant - United India Insurance Company Limited and respondent No.6 – Alpaben Savjibhai Thumar, to recover compensation of Rs.20 lakhs on account of the untimely demise of Habibbhai Mamadbhai Junach in a road accident which took place on 20.4.1999 on Dhrol-Jamnagar Highway at about 2.30-.2.45 P.M., has been partly

allowed and thereby the appellant-insurance company and respondent No.6, owner were directed to pay, jointly and severally, a sum of Rs.7,58,000/- together with interest at the rate of 9% per annum from the date of the application till realization and proportionate costs, as compensation to the claimants.

2. As per the averments made in the claim petition, on the fateful day i.e., 20.4.1999 at about 2.30-2.45 PM, deceased Habibbhai Mamadbhai Junach was riding the Hero Honda Motor Cycle bearing registration No.GJ-3-EE.7862 with Pillion rider Rafiqbhai Umarbhai and they were proceeding on Dhrol-Jamnagar Highway. When they reached near the bridge of Vav river just half km away from Dhrol, the truck bearing registration No.GJ-3-T-3044 driven by its driver in a rash and negligent manner and with excessive speed came from the opposite direction and went on the extreme wrong side of the road and dashed against the Hero Honda motor cycle as a result of which Habibbhai

sustained grievous injuries and succumbed to the same on the spot and the pillion rider Rafiqbhai sustained serious injuries as a result of which he sustained permanent partial disablement.

2(i) According to the claimants, the accident was the result of rash and negligent driving on the part of the driver of the offending truck and, therefore, the driver of the truck was primarily responsible to pay compensation. Since the offending truck was owned by the respondent No.6, Alpabhai Savjibhai Thumar, she was vicariously liable for the wrong act committed by the driver of the truck and the said truck was insured with the appellant and, therefore, the appellant was liable to indemnify the insured and was liable to satisfy the amount awarded by way of compensation in favour of the claimants and against the insured. Therefore, both the insured and insurer of the offending truck were liable to pay the compensation that may be awarded in favour of the claimants.

2(ii) Putting forth the claim for compensation, it was alleged that at the time of accident the deceased was aged 37 years old and he was hale and hearty without any ailment and addiction of any kind. He was earning Rs.1,50,000/- per year by doing iron scrap business and he had the potentiality to earn Rs.2 to 3 lakhs per annum in future. He was the only bread winner in the family. Therefore, on the ground of loss of dependency benefit, expectation of life, consortium as well as funeral expenses the claimants claimed total compensation of Rs. 20 lakhs with interest and costs from the owner and insurer of the offending truck i.e., respondent No.6 and the appellant.

3. The claim petition was contested by the appellant by filing written statement at Ex.19 wherein, inter alia, the accident was totally denied. Involvement of the vehicle in the accident was also denied. Rash and negligent

driving on the part of the driver of the truck and the contribution of the driver of the truck in causing the accident was also denied. It was emphatically averred that deceased Habibbhai himself was negligent in riding the motor cycle and, therefore, he was solely responsible and the driver of the truck was not negligent in driving the truck. It was also pleaded that the driver of the offending truck was not holding valid driving licence.

3(i) So far as the claim for compensation put forward by the claimants was concerned, it was denied. The age of deceased was denied. The income of the deceased, dependency as well as other claims were denied. Lastly it was averred that the claim was inflated and on higher side and, therefore, it was prayed to dismiss the claim petition filed by the claimants.

4. On the pleadings of the parties, the Tribunal framed issues and after considering the

evidence, oral as well as documentary, adduced and produced by the parties and the submissions advanced by the learned advocates appearing for the parties, came to the conclusion that the accident was the result of rash and negligent driving on the part of the driver of the offending truck as well as the rider of the motor cycle. The Tribunal held that the deceased Habibbhai was negligent to the extent of 20% and the driver of the truck was negligent to the extent of 80% for causing the accident and thus it was held that deceased Habibbhai himself and the driver of the offending truck had contributed in the ratio of 20:80 for the happening of the unfortunate mishap. Thus the deceased Habibbhai was contributory negligent to the extent of 20% for causing the accident.

4(i) It was further held that the driver of the truck being negligent in driving the offending truck, he was primarily liable to pay compensation. Respondent No.6 being the owner of

the truck was vicariously liable to pay the compensation and the appellant being the insurance company of the offending truck it was liable to indemnify the award which was going to be passed against the driver and owner of the truck insured with it and therefore held that respondent No.6 and appellant being the owner and insurer of the offending truck were jointly and severally liable to pay the compensation.

4(ii) So far as the quantification of compensation is concerned, the Tribunal, on the basis of the evidence on record has come to the conclusion that the claimants have produced income tax return of the deceased for the last five years and calculated the yearly income at Rs.54,823/- at the relevant time and thereafter determined the prospective income of the deceased at Rs.81,000/- per annum and thereafter deducted 1/3rd amount for his personal upkeep and worked out yearly prospective income at Rs.54,000/- (Rs.81,000 minus Rs.27,000 = Rs.54,000/-) and

applied 15 purchase factor and arrived at the loss of dependency benefit awardable to the claimant at Rs.8,10,000/-

4(iii) The Tribunal thereafter deducted 20% (Rs.1,62,000/-) by way of contributory negligence of the deceased from Rs.8,10,000/- and after deducting the said amount the Tribunal arrived at the total loss of dependency benefit available to the claimant at Rs.6,48,000/- and awarded the same under the head of dependency benefit.

4(iv) Thereafter the Tribunal awarded Rs.1,00,000/- under the head of conventional amount and Rs.10,000/- for funeral expenses incurred by the claimants and thus the total compensation was worked out as under:

Rs.6,48,000/- loss of dependency benefit
Rs.1,00,000/- conventional amount
Rs. 10,000/- funeral expenses

Rs.7,58,000/- Total

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4(v) Thus the Tribunal awarded Rs.7,58,000/- with interest at the rate of 9% per annum from the date of application till realization together with proportionate costs which has given rise to instant appeal at the instance of the appellant-insurance company.

5. In support of the appeal, Ms. Megha Jani, learned advocate for the appellant, has raised mainly the following two contentions:

(i) The Tribunal has deducted 20% towards the contributory negligence of the deceased only from the amount awarded under the head of loss of dependency benefits. According to her, 20% should have been deducted from the total amount of compensation awarded to the claimants and not from the amount awarded under head of loss of dependency benefits only.

(ii)The Tribunal has committed grave error in awarding Rs.1 lakh under the head of loss of estate i.e., conventional amount. According to her, as per the settled principles enunciated by the Supreme Court and various High Courts, the amount of compensation under the head of loss of expectation of life, in any case, should not exceed Rs.25,000/- She, therefore, urged to reduce the amount of Rs.1 lakh awarded under the head of loss of expectation of life to Rs.25,000/-

On the aforesaid premise, according to her, the amount of Rs.7,58,000/- awarded to the claimants is on higher side and is required to be modified by reducing 20% towards the contributory negligence of the deceased from the total amount of compensation and also the amount of Rs.1 lakh awarded under the head of loss of estate – conventional amount – is also required to be suitable reduced. She, therefore, submitted that the award may be suitably modified by partly allowing this appeal to that extent. She,

therefore, urged to allow the appeal.

6. Per contra, Mr. Mrugen Purohit, learned advocate for the claimants, has submitted that the impugned award does not call for interference of this Court as the Tribunal has rightly deducted 20% by way of contributory negligence on the part of the deceased from the amount of compensation awarded under the head of loss of dependency and according to him, the Tribunal has rightly awarded just compensation of Rs. 1 lakh under the head of loss of expectation of life looking the inflationary trend of money and erosion of rupee value which is crushing day-by-day and he submitted that the impugned award does not call for interference of this court in an appeal filed under Section 173 of the of the Act. He, therefore, urged to dismiss the appeal.

7. We have considered the submissions advanced by Ms. Megha Jani, learned advocate for the

appellant and Mr. Mrugen Purohit, learned advocate for the claimants. We have also perused the impugned award as well as the testimonial collections i.e., oral as well as documentary evidence supplied by the learned advocates appearing for the parties during the course of their submissions.

8. Since Ms. Jani has not challenged the finding recorded by the Tribunal so far as the negligence on the part of the driver of the offending truck is concerned, we do not deem it expedient to examine the said aspect. The tribunal held that the driver of the offending truck was negligent to the extent of 80% for causing the accident while the deceased was held contributory to the extent of 20%. Therefore, we confirm the said finding.

9. On a perusal of the impugned award and more particularly the Income Tax Return of the deceased for the last five years prior to the

accident, according to us, the Tribunal has rightly assessed the income of the deceased at Rs. 54,823/- at the relevant time i.e., at the time of accident and the Tribunal has also rightly considered Rs.81,000/- as prospective income of the deceased per annum considering various pronouncements of the Supreme Court, which, according to us, does not require any interference of this Court. We also find that the Tribunal has very rightly deducted 1/3rd from the Rs.81,000/- for determining the dependency benefits available to the claimants and after doing so the Tribunal has determined Rs.54,000/- per annum toward dependency benefit to the claimants. The Tribunal has also very rightly applied 15 purchase factor and rightly worked out Rs.8,10,000/- towards dependency benefits available to the claimants.

10. However, the Tribunal has erred in deducting 20% by way of contributory negligence of the deceased from the said amount of

Rs.8,10,000/- only. The Tribunal ought to have deducted 20% towards the contributory negligence of the deceased not only from the dependency benefit but from the total amount awardable to the claimants by way of compensation. Therefore, we propose to deduct 20% by way of contributory negligence from the total amount of compensation awardable to the claimants.

11. Ms. Jani, learned advocate for the appellant, is also justified in her submission that the Tribunal has erroneously awarded Rs.1 lakh under the head of conventional amount i.e., loss of expectation of life. We do not find any support from any reported decision of the Supreme Court or High Courts awarding Rs.1 lakh under the head of loss of expectation of life to the members of the family of the deceased who has died in the vehicular accident. According to us, the Tribunal ought to have awarded Rs.25,000/- under the head of loss of expectation of life. We, therefore, award Rs.25,000/- under the head

of loss of expectation of life instead of Rs.1 lakh awarded by the Tribunal.

12. It has also come in evidence that claimant No.1 – Aminaben Habibbhai Junach, was aged about 32 years at the relevant time and on demise of her husband she has become widow and lost company as well as protective umbrella of her husband for the remaining span of her life. Therefore the Tribunal ought to have awarded reasonable amount under the head of consortium. Since the Tribunal has not awarded any amount under this head, we propose to award Rs.15,000/- under this head. We, therefore, award Rs.15,000/- under the head of consortium to her.

13. So far as the funeral expenses of Rs.10,000/- awarded to the claimants are concerned, we do not find any reason to interfere with the said amount awarded by the Tribunal under this head and accordingly we confirm the same.

14. Thus we work out the compensation awardable to the claimants as under:

Rs.8,10,000/-	loss of dependency benefits	
Rs. 25,000/-	loss of expectation of life	
Rs. 15,000/-	consortium	
Rs. 10,000/-	funeral expenses	
Rs.8,60,000/-	Total	

Therefore, the claimants are entitled to Rs.8,60,000/- by way of compensation. However, in view of the finding of the Tribunal that the deceased Habibbhai himself was contributory negligent to the extent of 20%, 20% amount from the total amount of compensation awardable to the claimants i.e., Rs.8,60,000/- is required to be deducted. In doing so, the total compensation awardable to the claimants comes to Rs.6,88,000/- (Rs.8,60,000/- minus Rs.1,72,000/- (20%

contributory negligence) = Rs.6,88,000/-). Thus the claimants are entitled to Rs.6,88,000/- by way of compensation from the appellant with interest at the rate of 9% per annum from the date of the application till realization with proportionate costs.

15. It has also come in evidence that claimant No.1 is the widow whereas claimant Nos.2, 3 and 4 are the minor children whereas claimants No.5 is the aged mother of the deceased and, therefore, we propose to apportion the amount of compensation among the claimants as under:

(i) Claimant No.1 is entitled to 40% and (ii) claimant Nos.2, 3, 4 and 5 are entitled to 15% each of the total amount of compensation. Therefore the award is also required to be modified so far as the apportionment is concerned.

16. Seen in the above context, the appeal deserves to be allowed in part by reducing the amount of compensation and the award is also required to be modified to the extent indicated above in this judgment.

17. For the foregoing reasons, the appeal succeeds in part and accordingly it is partly allowed with no order as to costs of this appeal. The impugned judgment and award dated 30.9.2005 awarding compensation of Rs.8,10,000/- is hereby modified by awarding total compensation of of Rs.6,88,000/- instead of Rs.8,10,000/- together with interest at the rate of 9% per annum from the date of the application till realization with proportionate costs thereon. The Tribunal is directed to apportion the amount of compensation awarded to the claimants as under:

(i) Claimant No.1 shall be paid 40% of the total amount of compensation.

(ii) Claimant Nos.2, 3, 4 and 5 shall be paid 15% each of the total amount of compensation.

The Tribunal is further directed to invest 70% of the amount from the total amount of compensation payable to each claimant in any nationalized bank for a period of five years, yielding higher rate of interest, in the name of each claimant on which they are entitled to receive periodical interest with a rider that they are not permitted to encash the said FDR prematurely or to take advance or create any encumbrance upon them. Remaining 30% amount that comes to the share of each claimant, as per the apportionment made hereinabove, shall be paid to each claimant by account payee cheque in their respective name.

Modified award to be drawn up accordingly.

(A.M. Kapadia, J.)

(Harsha Devani, J.)

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